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**REPORT OF INVESTIGATION AND FINDINGS
Allegations of Violations of the
University of California Sexual Harassment Policy
Research Enterprise Services
December 2011**

I. Allegations

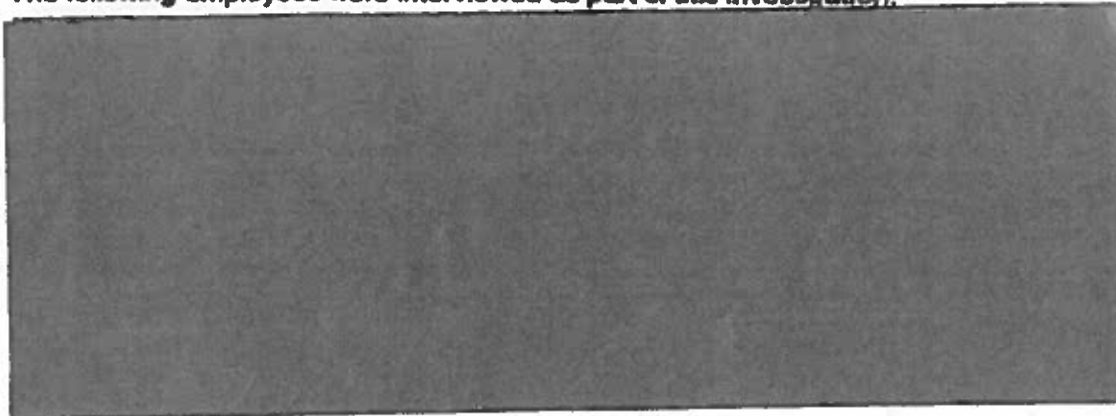
On August 17, 2011, [REDACTED] of [REDACTED], filed a grievance with Berkeley Campus Human Resources. [REDACTED] grievance included numerous allegations of violations of various University policies. Among these was the claim that RES Assistant Vice Chancellor Diane Leite had an affair with her subordinate that created a conflict of interest; and that [REDACTED] work environment was exposed to a sexually hostile environment as a result of this consensual sexual relationship and conflict of interest. Because these allegations posed possible violations of the University Policy on Sexual Harassment, they were referred to the Campus Climate and Compliance Office for review under the Policy. Interim Title IX Compliance Officer/ Director Denise Oldham and Complaint Resolution Officer Carmen McKines conducted the investigation.

On August 30, 2011, the campus received a Whistleblower complaint from [REDACTED], and on September 22, 2011, [REDACTED] submitted another Whistleblower complaint. Both complaints [REDACTED], including claims that [REDACTED] RES Purchasing Manager Jonathan Canlezo, engaged in conduct that produced a sexually hostile environment in the RES stockroom, [REDACTED]

These allegations were also referred to the Campus Climate and Compliance Office for review and are explored in this report.

II. The Investigation

The following employees were interviewed as part of this investigation.



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The investigators also reviewed personnel data from the Berkeley Human Capital Management (HCM) system and the UC Learning Center, RES organizational charts, and background documents provided by [REDACTED] Leite and other witnesses

III. Applicable Policy

The University of California Policy on Sexual Harassment defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment... In determining whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of circumstances, including the context in which the conduct occurred.

The Policy also addresses conflicts of interest arising from consensual relationships. A consensual relationship is defined as one in which two individuals are involved by mutual consent in a romantic, physically intimate, and/or sexual relationship. A consensual relationship that might be appropriate in other circumstances is inappropriate and poses a potential conflict of interest when one individual has responsibility for supervising, directing, overseeing, evaluating, advising, or influencing the employment or educational status of the other. It is always the responsibility of the individual in authority to maintain appropriate professional boundaries. Individuals in authority are expected to be aware of their professional responsibilities and avoid apparent or actual conflict of interest, favoritism, or bias.

This policy is intended to apply to all types of conflicts of interests created by consensual relationships within the University community where one individual has power or authority over the other. Relationships covered by this policy include, but are not limited to, relationships between supervisor and supervisee; faculty and staff; faculty and student (in situations not covered by APM-015), coach and student; student and student; and house-staff or postdoctoral scholar and other house-staff, other postdoctoral scholar, or other employee.

Because of the potential for a conflict of interest, any member of the University community who enters into a consensual relationship with someone over whom he or she has supervisory, decision-making, oversight, evaluative, or advisory responsibilities shall take effective steps to remove him or herself from any professional decisions concerning that individual. The individual in authority can be held accountable for creating a sexually hostile environment and thus should avoid creating a situation that adversely impacts the working or learning environment of others. The individual in authority shall eliminate, or arrange with his or her supervisor to eliminate, any potential conflict of interest.

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The full version of the Policy is included in Appendix I.

IV. Summary Findings

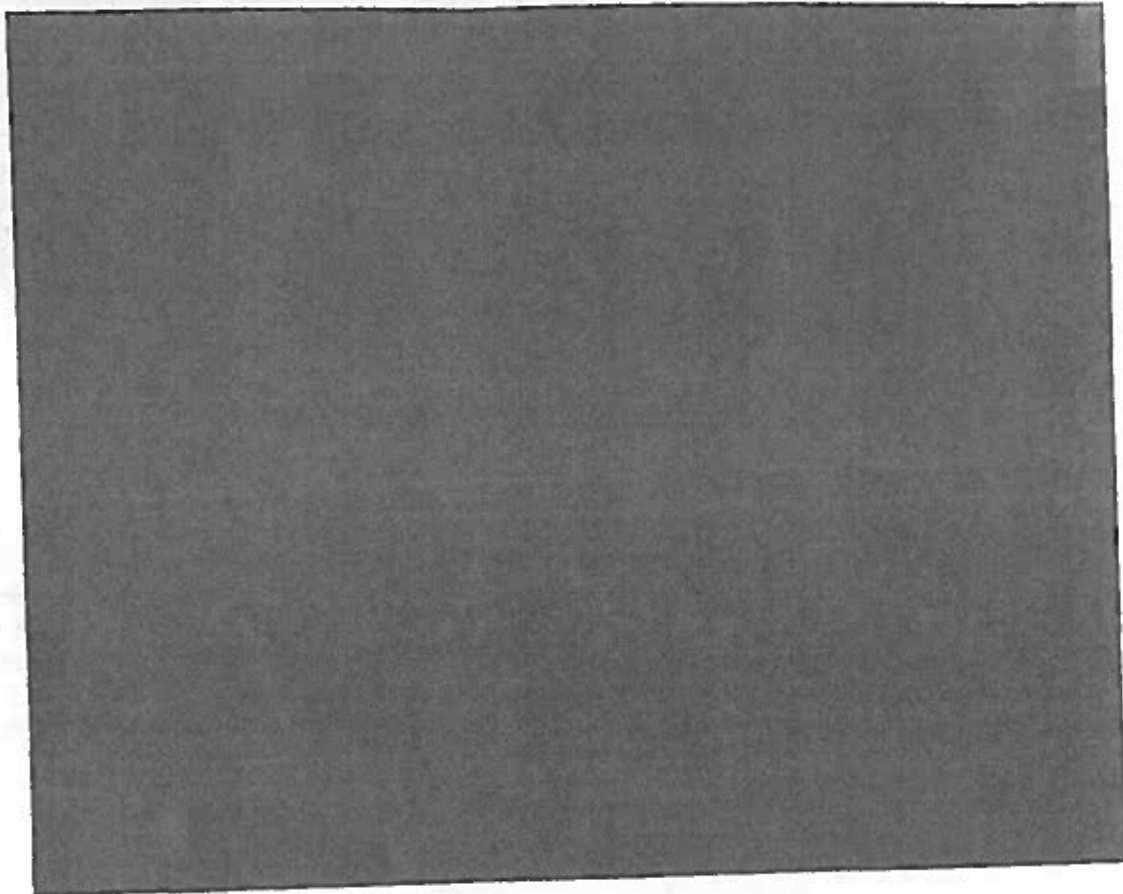
The investigators find that Leite violated the UC Policy on Sexual Harassment by not taking effective steps to remove herself from professional decisions concerning an employee with whom she was engaged in a consensual romantic relationship.

REDACTED raised additional allegations that AVC Leite's conduct resulted in a sexually hostile environment for her, in violation of the Policy. The investigators did not find sufficient evidence to support these allegations.

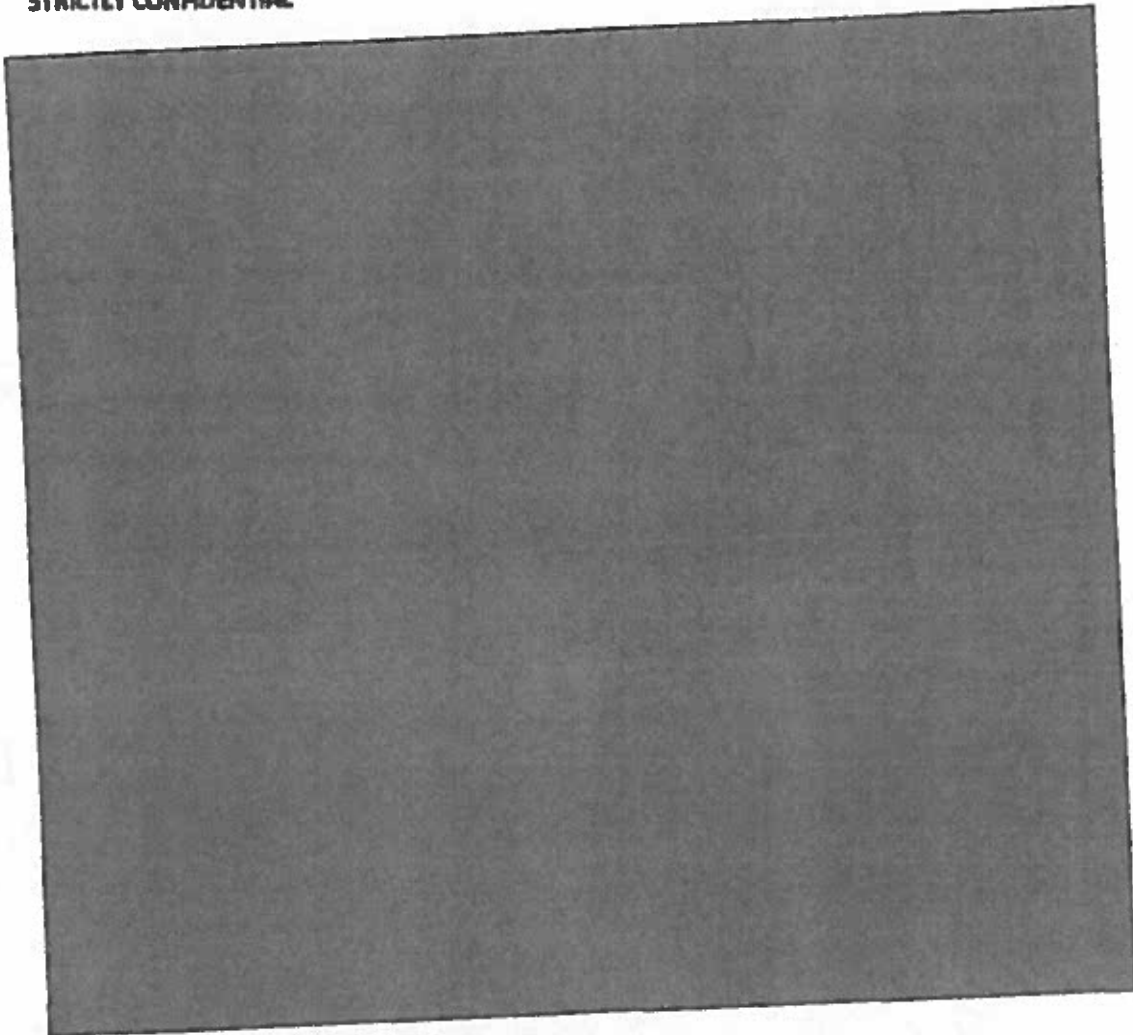
Finally, the investigators find that RES Procurement Manager Jonathan Caniezo violated the UC Policy on Sexual Harassment by creating a sexually hostile environment for **REDACTED** in violation of the Policy.

A detailed discussion of these findings is included in Section VII.

V. Background



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VI. Facts

A. The Consensual Relationship and Reporting Lines

1) The sexual affair

Both Leite and [REDACTED] acknowledged that they engaged in a consensual romantic relationship, and that Leite supervised [REDACTED] while they were romantically involved. Prior to [REDACTED] grievance that led to the above allegations, an anonymous complaint about the relationship between Leite and [REDACTED] surfaced in various campus offices including the Campus Climate and Compliance Office and campus Human Resources. In a meeting to discuss the anonymous allegations with Leite, Vice Chancellor for Research Graham Fleming, Labor and Employee Relations Director Debra Harrington

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and Title IX Officer Oldham on August 8, 2011, Leite acknowledged that she had indeed had a consensual affair with [REDACTED] and that she had been his supervisor for part of that time. She indicated that the relationship had begun in September of 2009 and ended in late 2010 or at the beginning of 2011. Leite also stated that [REDACTED] direct supervisor was now [REDACTED]. She claimed that she had not been aware that her reporting relationship to [REDACTED] created a conflict of interest in violation of the UC Policy on Sexual Harassment. Given Leite's admission and the apparent policy violation, Fleming agreed to consult with the Vice Chancellor for Research Human Resources Director Lisa Bolivar and Harrington to change reporting lines that would address the conflict of interest, and mitigate perceptions of favoritism and bias.

In his interview in response to [REDACTED] complaint, [REDACTED] admitted that he had had an affair with Leite and indicated the same timeframes for the relationship. When asked if he realized whether a consensual relationship with his supervisor violated UC Policy, [REDACTED] said that he had not been aware of the specific provision in the policy.

Records from the UC Learning Management System indicate that Leite completed mandatory sexual harassment prevention training for supervisors in January 2006, October 2009, and August 2011. [REDACTED] completed the same training in August 2009, and August 2011. The online curriculum includes an explanation of the provisions in the UC Policy on Sexual Harassment addressing conflicts of interest that arise from consensual romantic relationships. It is therefore reasonable to expect that both employees, but especially Leite, would have been aware that their reporting relationship would constitute a violation of University Policy, and should have taken steps to eliminate the conflict of interest.

2) Reporting Lines

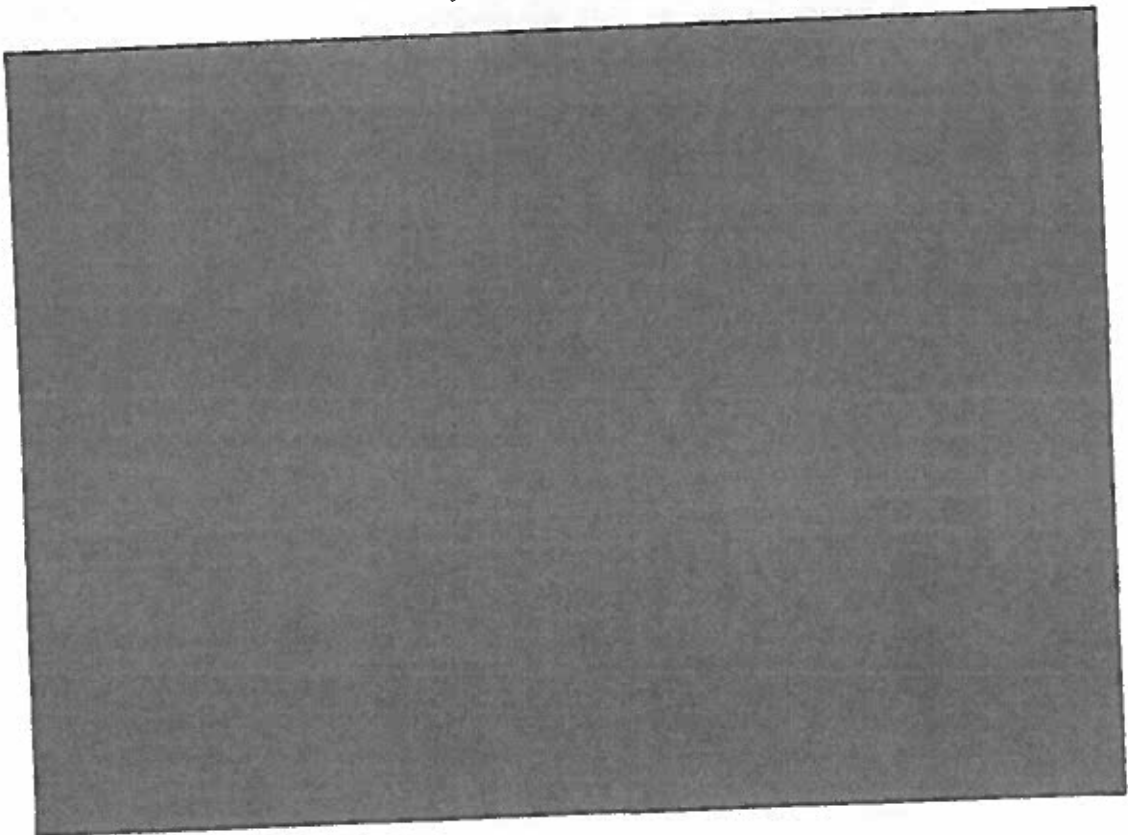
Information about the direct reporting relationship between Leite and [REDACTED] varies. [REDACTED] understood that she was [REDACTED] direct supervisor from January 2008 to March 2010 and that the reporting line shifted to Leite from March 2010 to August 2011. She said that she approached Leite and told her that she was feeling overwhelmed with her workload during the RES restructuring as a result of Operational Excellence and needed help. Leite agreed to take over the direct supervision of [REDACTED]. In her interview Leite recalled a similar conversation with [REDACTED] about workload and agreed to temporarily assume oversight of some of the day-to-day operations of the unit that [REDACTED] supervised during the RES restructuring. Her understanding, however, was that the unit continued to formally report to [REDACTED]. In late spring of 2011 [REDACTED] expressed her desire for Leite's management of [REDACTED] to be made "official."

[REDACTED] characterized his understanding of his reporting line as "a gray area." He explained that "on paper" he reported to [REDACTED] but "in practice" he went to Leite for day-to-day direction and help. He recalled a conversation between Leite and [REDACTED] about him reporting to Leite. He stated, "All of this occurred verbally but nothing was put in writing." He clarified that Leite was the person he approached for time off requests, direction about his work, and other management concerns. In August of 2011 his reporting line was changed again. His current supervisor is [REDACTED].

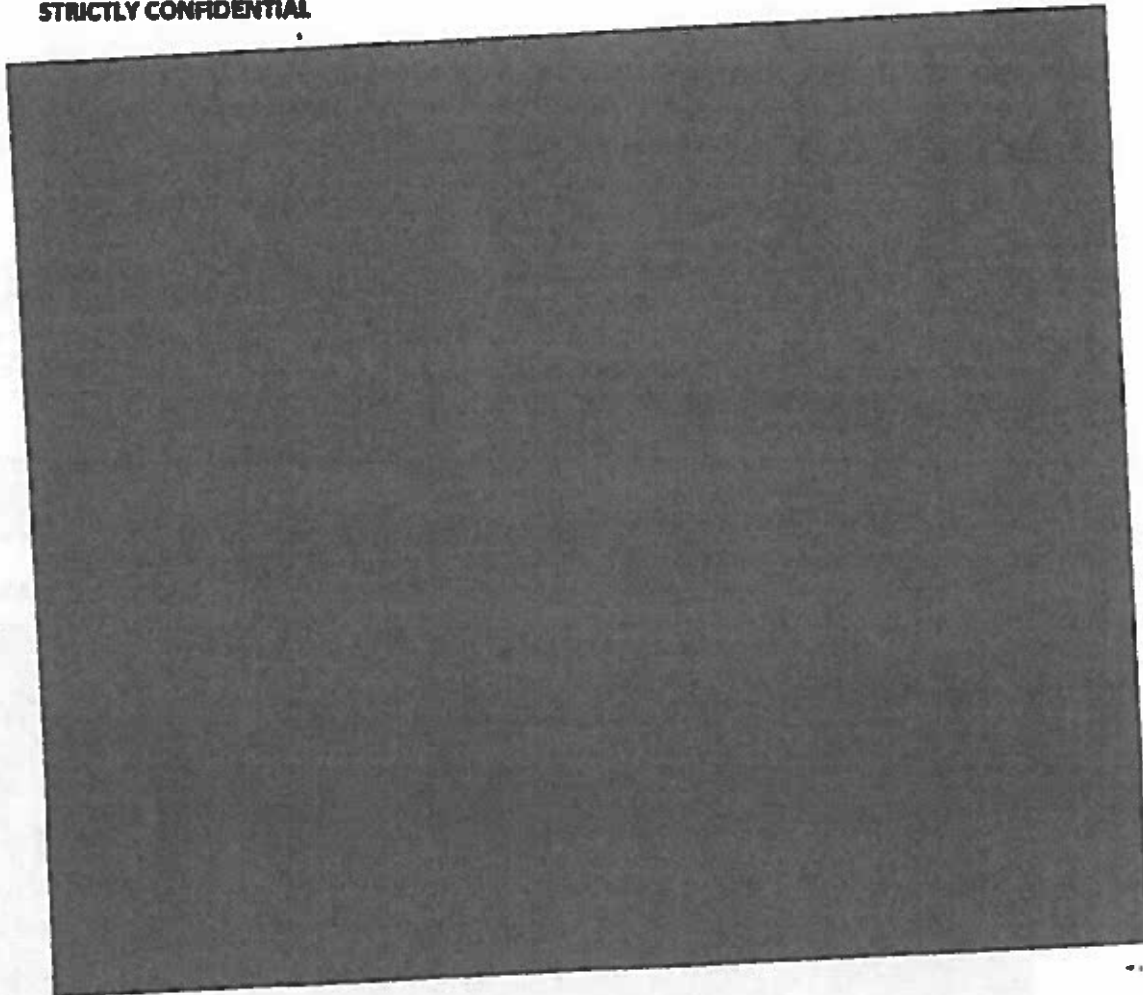
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Records in the Berkeley Human Capital Management (HCM) System match none of these understandings. [REDACTED] job records list Leite as [REDACTED] direct supervisor from December 1, 2005, to July 1 2010, when [REDACTED] became his direct supervisor. Department information varies yet again. Organizational charts submitted for various compensation actions in August of 2009 and April of 2011 indicate that [REDACTED] reported to [REDACTED]. An organizational chart from July of 2011 shows [REDACTED] reporting directly to Leite.

Despite these differing accounts of the direct reporting relationship between Leite and [REDACTED] it is evident that Leite violated the UC Policy on Sexual Harassment by not taking effective steps to remove herself from professional decisions regarding his employment. Whether [REDACTED] was Leite's direct subordinate, or whether he reported directly to [REDACTED] it is clear that she maintained the ability to influence his employment status during their consensual relationship. As indicated above, a week before [REDACTED] filed her grievance on August 17, 2011, the University had confirmed the conflict of interest in violation of the University of California Policy on Sexual Harassment, and the Vice Chancellor for Research Office initiated action to eliminate the conflict of interest resulting from the consensual relationship between Leite and [REDACTED].



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C. Leite Undermined [REDACTED] Supervisory Role

[REDACTED] alleged that Leite and [REDACTED] affair created difficulties for her as a supervisor and that Leite undermined her role in supervising [REDACTED]

1) Pressure to give pay increases

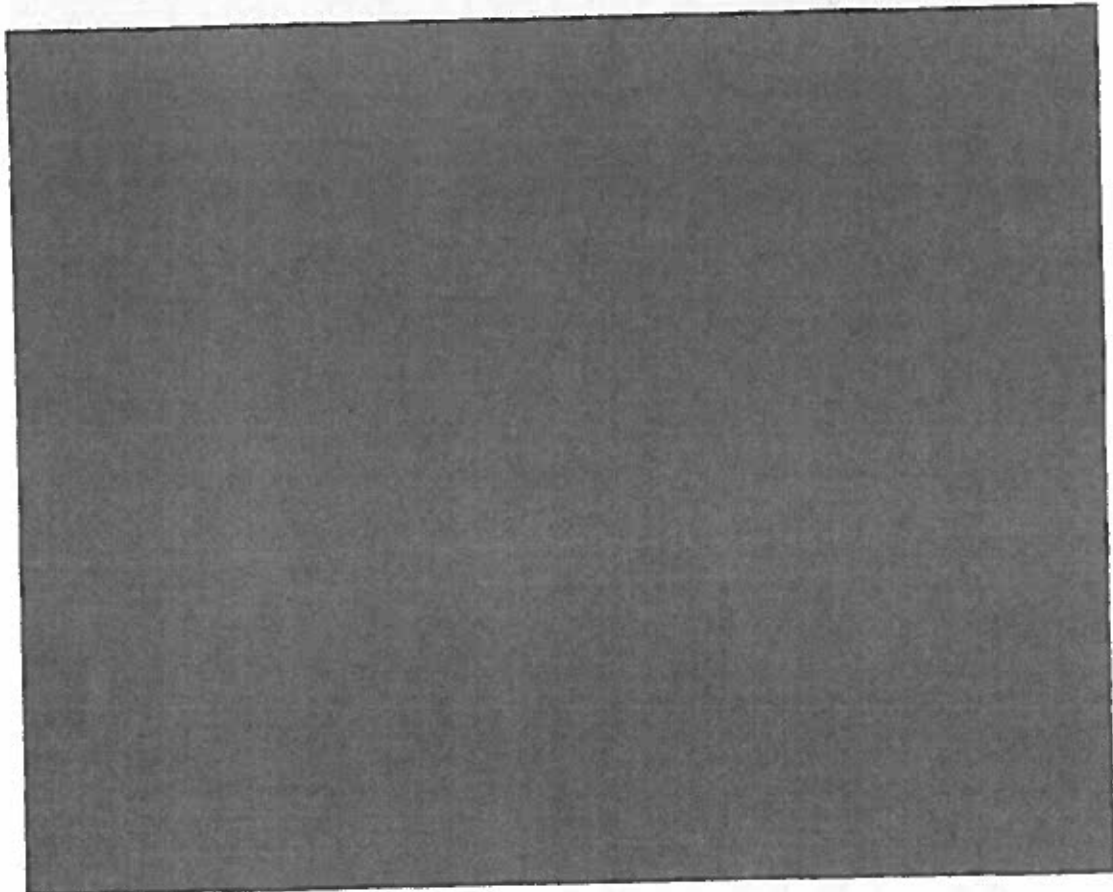
According to [REDACTED] [REDACTED] received a pay increase that she felt pressure to process because Leite directed her to write it up. She said that in January 2010 she began arguing with Leite about [REDACTED] stipend, because she felt that Leite was providing [REDACTED] with compensation that he had not earned. The debate appeared to last for months. [REDACTED] provided evidence from text and email messages to Leite in April 2010 that supported the above assertions. The additional stipend request was made in February 2010, around the time she said Leite believed that [REDACTED] might be offered another job off campus. [REDACTED] stated that Leite used a description of work that she [REDACTED] had actually performed to justify a proposed 15% stipend increase.

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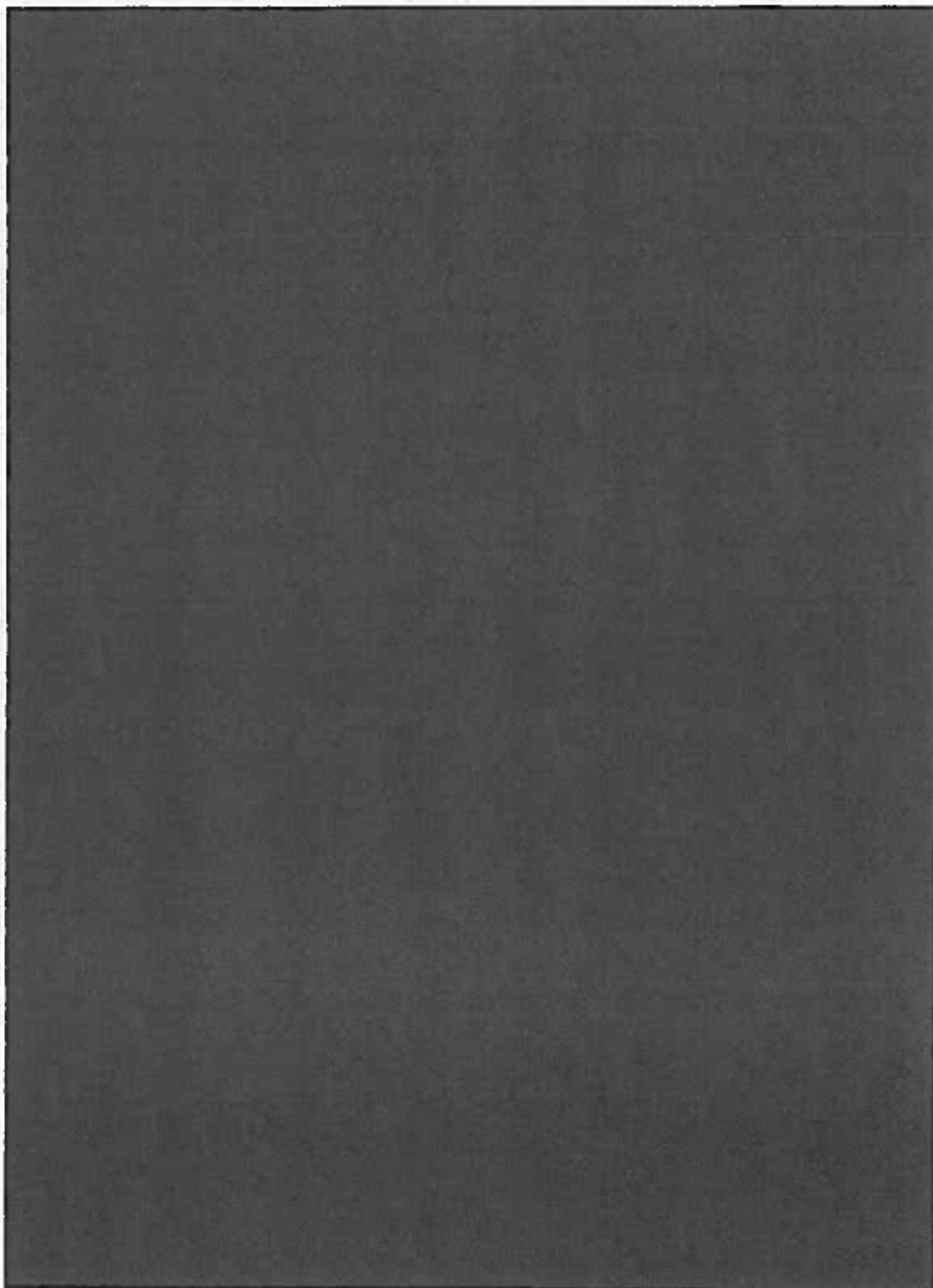
[REDACTED] [REDACTED] stated that she agreed with a previous salary increase [REDACTED] received in July 2009 because it was justified. As his supervisor, she could vouch for the work he had done. However, after [REDACTED] and Leite began sleeping together, [REDACTED] received five additional salary increases initiated by Leite between 2009 and 2010. HCM records validate these pay increase transactions for [REDACTED]

Leite recalled making a stipend request for both [REDACTED] and [REDACTED] recognition of additional work performed in relation to the campus Organizational Excellence (OE) project in 2009. [REDACTED] went on leave at the end of 2009, and thus her stipend was cancelled. She said she remembered discussing appropriate salary levels with [REDACTED] but did not recall any disagreement.

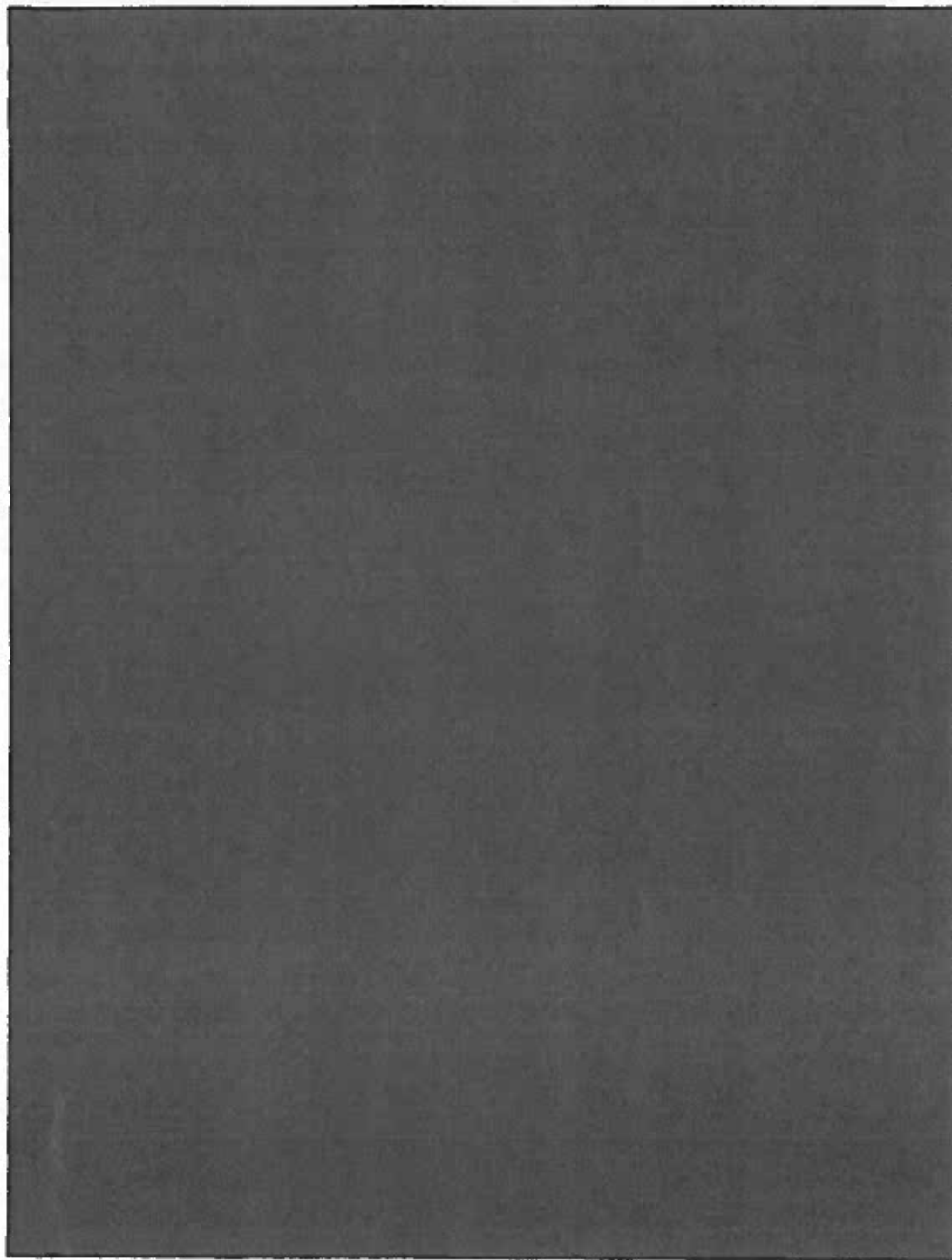
However, the evidence included in [REDACTED] text message documentation is compelling, and suggests that Leite did exert pressure on her to support a pay increase for [REDACTED] that she [REDACTED] did not believe, as his supervisor, was justified. Leite's ongoing romantic relationship with [REDACTED] more likely than not provided the underlying motivation for her support of this salary action, despite [REDACTED] disagreement with it.

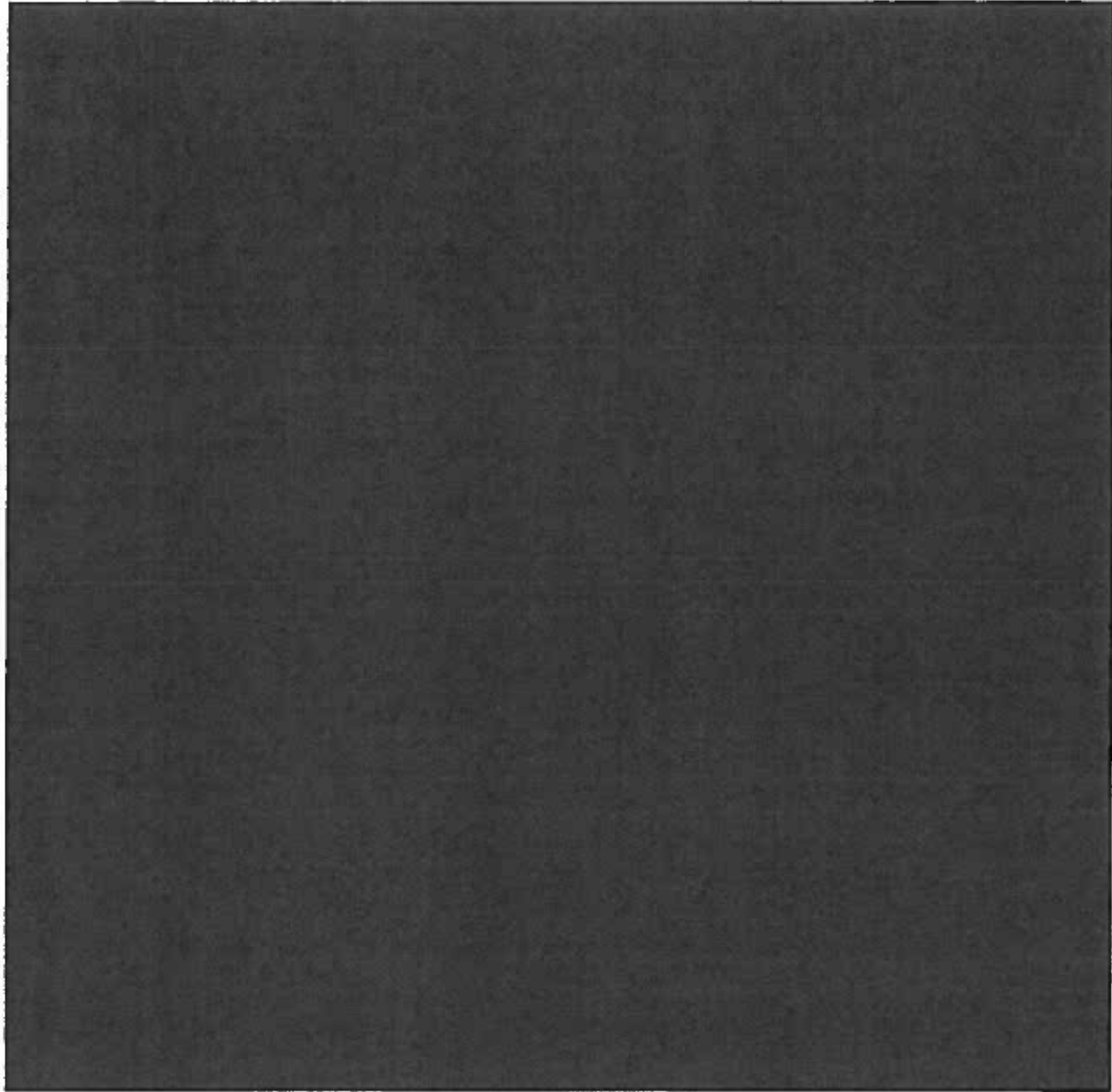


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3) Offensive climate in the stockroom

In two separate written Whistleblower complaints³, [REDACTED] raised specific concerns about Caniezo's behavior in the RES stockroom [REDACTED]. In their interviews, both employees claimed that Caniezo frequently addressed them as "bitches," either verbally or in writing, and made other sexual or



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offensive references, e.g., calling them "hoe," "pussy," and "cunt." They clarified that sometimes the context for the use of these words was "just guys talking about sports," e.g., he might refer to a football or basketball player on an opposing team as a "bitch," but claimed that he also personally addressed them this way. [REDACTED] said that Caniezo often called him a "bitch" in the context of criticizing his work, e.g., calling him a "lazy bitch." When asked how he interpreted Caniezo's use of the term, [REDACTED] clarified that, when Caniezo called him [REDACTED] a "bitch," his intended meaning was to demean his "manhood," to imply more like a woman.

[REDACTED] stated that as early as late 2008 he tried to express to Caniezo that he did not like being addressed that way, and that there was a difference between horsing around and teasing during breaks, and using that sort of language in a work context. Caniezo seemed unmoved by his requests to stop cursing at him and using sexualized language, especially in front of others.

[REDACTED]

In his interview, [REDACTED] corroborated [REDACTED] account of Caniezo's behavior. [REDACTED] stated that Caniezo did not address him personally as a "bitch" or a "cunt" nearly as much as he did with [REDACTED], but the behavior was nevertheless unnecessary and offensive. Both men stated that the use of profanity and sexualized language had decreased in the last few months, and both were aware that Leite had had meetings with Procurement staff about the unprofessional climate.

Caniezo admitted that at times the language among stockroom staff was a bit "rough." He said everyone used profanity (e.g., "shit," "fuck," and "bitch") during "guy talk" conversations, mostly about sports. He said that the term "bitch" was never intended to be gender-specific. He said that a few months earlier Leite had spoken to him and other staff about maintaining a more professional atmosphere in the stockroom, and that as a result the profanity had lessened considerably. [REDACTED]

[REDACTED]

According to [REDACTED], Caniezo and others sometimes used profanity, such as the term "bitch," during "shop talk between guys," e.g., when talking about sports. He added that sexualized language was only used in this context and was not pervasive in the workplace. He said he had not experienced Caniezo personally addressing any of the staff as "bitches," "cunts," etc. He was unaware of any of the stockroom staff having open conversations about their sex lives or sexual affairs.

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██████████ had a similar account of Caniezo's behavior. He described the stockroom atmosphere as kind of "like a team" where the staff were "players" and Caniezo was "coach." He said that sometimes they all used profanity when they talked about sports, but never heard Caniezo personally refer to a staff member as a "bitch." He hadn't heard anyone talking about their own sex lives or affairs, and never heard derogatory remarks about female employees, vendors, or potential applicants.

About a week after his interview ██████████ submitted some examples of text messages he had received from Caniezo to corroborate his allegations about the sexually hostile language directed at ██████████ and him:

From: (Caniezo)

To: ██████████

You bitches left early and didn't even close my door! What the fuck!

From: (Caniezo)

To: ██████████

Having a nice circle jerk?⁴

While the accounts from Caniezo, ██████████ contradict the assertions of ██████████, the evidence from ██████████ tends to support their claim that Caniezo addressed them using sexualized language that they, or any employee regardless of sex, would find objectively offensive.

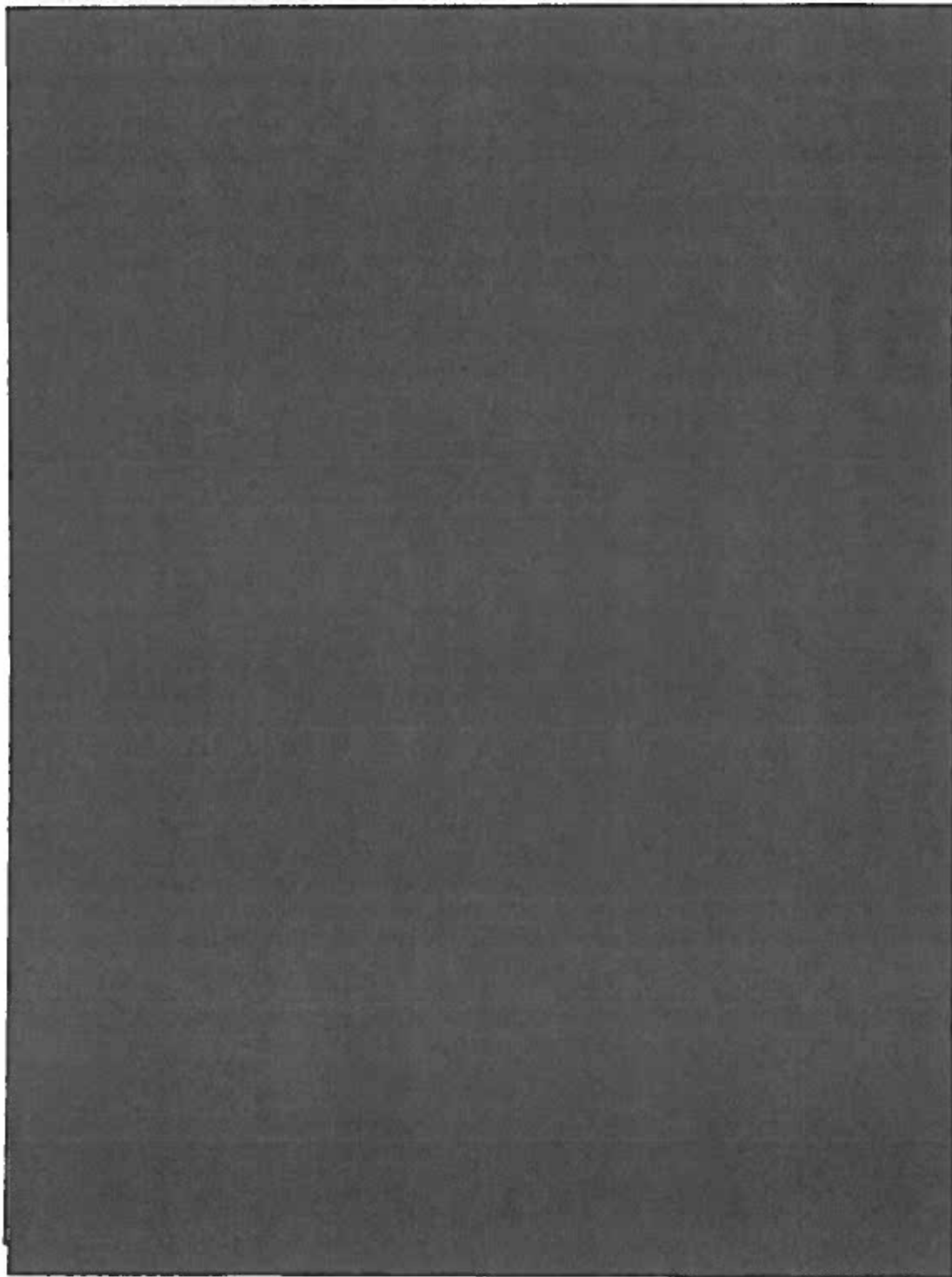
VII. Discussion of the Issues

A. Conflict of Interest Arising out of the Consensual Relationship

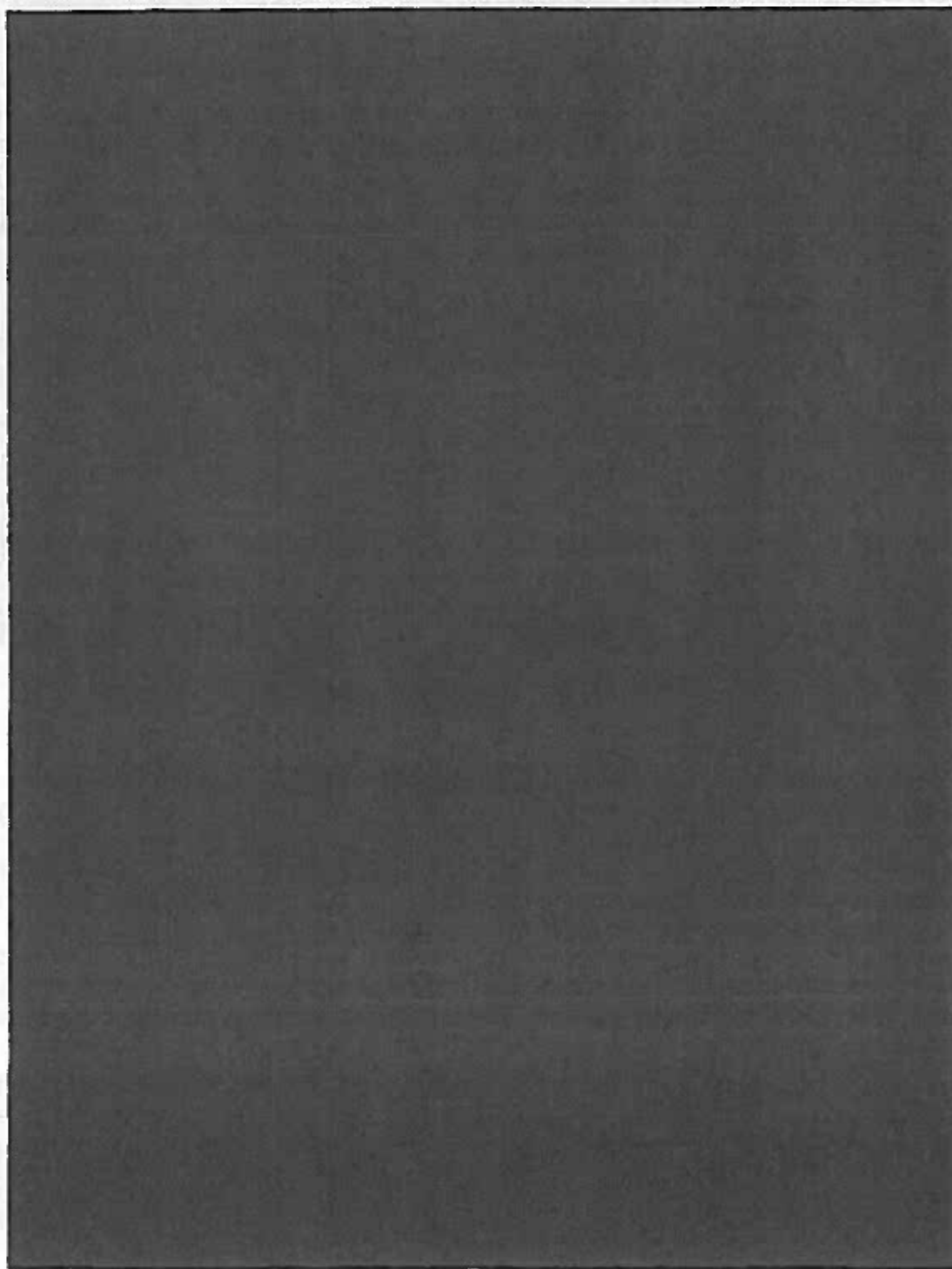
As previously stated, clearly the reporting relationship between Leite and ██████████ during their consensual relationship created a conflict of interest and a violation of UC Policy on Sexual Harassment. Leite has been a campus manager (since 1982), and a high-level manager since 2008. Moreover, Leite's successful completions (three in a five year period) of the mandatory sexual harassment training curriculum, which provides a thorough description of the Policy and expectations of a supervisor engaged in a consensual relationship with a subordinate, further demonstrates that Leite should have known better. She did not address the situation in an appropriate or timely manner. Given her organizational status, including sexual harassment training, it is difficult to understand or accept that at the time of the relationship (2009-2010), Leite "did not know" that her conduct was in violation of the Policy or unaware of the University's expectations of her.

⁴ This term is commonly defined a sexual practice in which males form a circle and masturbate.

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C. Sexually Hostile Environment for [REDACTED] and [REDACTED] in the RES stockroom

1) Climate in the RES stockroom

As stated in Section VI.D.3 above, [REDACTED] and [REDACTED] complained that Caniezo created a sexually hostile environment in the RES stockroom by addressing them with persistent sexually charged epithets. [REDACTED] were credible in their descriptions that the sexualized language directed at them by [REDACTED] was unwelcome. As stated above, the text message evidence provided by [REDACTED] points to the severity of Caniezo's unwelcome sexualized conduct, and it's offensiveness to a reasonable person. When questioned about whether or not [REDACTED] sexualized language interfered with their work performance; both men indicated that his hostile and derogatory remarks to them poisoned the atmosphere and soured their attitude toward work.

VIII. Conclusion

The investigators evaluated the record of the allegations as a whole and gave consideration to the totality of the circumstances, including the context in which the alleged incidents occurred. The standard by which the evidence was weighed was "more likely than not." Based on information gathered from interviews with the complainant, respondent, and witnesses, in addition to the review of relevant documents and campus data sources, the investigators make the following findings with respect to the UC Policy on Sexual Harassment:

There is sufficient evidence to conclude that RES Assistant Vice Chancellor Diane Leite violated the UC Policy on Sexual Harassment with regard to Conflicts of Interest Arising from Consensual Relationships. AVC Leite did not take effective steps to eliminate the conflict of interest that resulted from her sexual affair with [REDACTED]

There is sufficient evidence to conclude that Procurement Manager Jonathan Caniezo violated the UC Policy on Sexual Harassment by creating a sexually hostile environment for [REDACTED]